

FILED  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ALPHONSO SYVILLE,

★ OCT 17 2018 ★

BROOKLYN OFFICE PUBLICATION

Plaintiff,  
-against-

MEMORANDUM & ORDER  
18-CV-1761 (KAM) (LB)

CITY OF NEW YORK, BLAKE MICA  
SHELTER, D.H.S.,

Defendants.  
-----X

**MATSUMOTO, United States District Judge:**

Plaintiff Alphonso Syville filed this *pro se* action on March 16, 2018 alleging that the conditions at the Blake Avenue Shelter in Brooklyn, New York, where he resides, violate federal and state laws. (See ECF No. 1, Complaint.) By order dated June 6, 2018, the court dismissed *pro se* plaintiff's complaint and granted him 30 days to file an amended complaint curing any deficiencies. (ECF No. 45, Memorandum and Order.) Plaintiff failed to file an amended complaint within the allotted time. On July 16, 2018, the court *sua sponte* granted plaintiff an extension to file an amended complaint until August 3, 2018 and warned plaintiff that failure to do so might result in dismissal of this action with prejudice pursuant to Federal Rule of Civil Procedure 41 for (1) failure to comply with court orders and (2) failure to prosecute. To date, plaintiff has not filed an amended complaint. (ECF Entry dated 7/16/18.)

The Second Circuit has identified five factors for the court to assess when determining whether dismissal is proper: whether "(1) the duration of plaintiff's failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff's right to an opportunity for a day in court; and (5) [whether the court] adequately assessed the efficacy of lesser actions." *United States ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004). No single factor is dispositive. *Id.*

The court has considered the *Drake* factors and finds that dismissal is proper in the instant action. Accordingly, the action is dismissed. The Clerk of Court is respectfully directed to enter judgment, serve plaintiff with a copy of his order and the judgment, note service on the docket, and close this case.

**SO ORDERED.**

/s/  

---

**Hon. Kiyo A. Matsumoto**  
United States District Judge

Dated: October 12, 2018  
Brooklyn, New York